

August 27, 2004

Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Retention by Broadcasters of Program Recordings*
(Docket No. 04-232)
Comments of Morgan Murphy Stations

Dear Ms. Dortch:

On behalf of Morgan Murphy Stations, we respectfully submit the following Comments in opposition to the proposal outlined in the July 7, 2004 Notice of Proposed Rule Making in the above-referenced proceeding.

Respectfully submitted,

/s/ Robert J. Rini

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Morgan Murphy Stations

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Re: *In the Matter of Retention by Broadcasters of Program Recordings*
(Docket No. 04-232)
Comments of Morgan Murphy Stations

Morgan Murphy Stations (“Morgan Murphy”)¹ provides its comments in response to the Notice of Proposed Rule Making (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in connection with the above-referenced proceeding. The Commission’s proposal would require broadcasters to retain recordings of their broadcasts for a limited period of time (e.g. 60-90 days) in connection with the FCC’s procedures for enforcing restrictions on obscene, indecent and profane broadcast programming. *See* NPRM at p.1. Morgan Murphy recognizes its responsibility as an FCC licensee to comply with federal laws and regulations that prohibit the utterance of “any obscene, indecent, or profane language by means of radio communication.” Nevertheless, Morgan Murphy believes that the proposed retention requirements would place undue operational and financial burdens on broadcasters, particularly in the small and medium markets where it operates and believes that the FCC should not adopt the mandatory recording/retention proposal.

Under current law, broadcasters already have strong incentives to retain recordings of their programming voluntarily for potential use in indecency enforcement

¹ Morgan Murphy Stations include: Television Wisconsin, Inc. (WISC-TV, Madison, WI), QueenB Radio Wisconsin, Inc. (WPVL[AM] & WPVL-FM, Platteville, WI; WGLR[AM] & WGLR-FM, Lancaster, WI; KIYX-FM, Sageville, IA), Spokane Television, Inc. (KXLY-TV, Spokane, WA); QueenB Radio, Inc. (KZZU-FM, Spokane, WA; KXLI[AM], Opportunity, WA; KEZE-FM, Spokane, WA), Spokane Radio, Inc. (KXLY[AM] & KXLY-FM, Spokane WA); Apple Valley Broadcasting, Inc. (KAPP-TV, Yakima, WA, KVEW-TV, Kennewick, WA), and QueenB Television, LLC (WKBT-TV, La Crosse, WI).

proceedings. As the NPRM notes, the Commission will presume that in cases “where a licensee can neither confirm nor deny the allegations of indecent broadcasts in a complaint, we have held that the broadcasts occurred.” *See* NPRM at p. 9. As a practical matter, the only way broadcasters can overcome this presumption is to record and retain transcripts of their broadcasts for possible use in indecency enforcement proceedings. For this reason, some broadcasters already take advantage of a voluntary form of the proposed recording policy, and the transition to a mandatory requirement would provide no additional benefit to the FCC’s enforcement process when weighed against the burdens added storage would impose on television broadcasters in particular.

Furthermore, Morgan Murphy believes the current lack of a recording and retention requirement has provided little impediment to enforcement action. The NPRM itself bears this out. The Commission notes that of the 14,379 complaints it received between 2000 and 2002, it denied or dismissed only 169 complaints “for the lack of a tape, transcript or significant excerpts” – or just over one percent of all complaints. *Id.* This track record suggests that the Commission’s proposal is a solution in search of a problem.

The Commission recognizes that retention of third-party commercial material may raise copyright or contractual issues. For some broadcasters, a mandatory recording/retention rule would run afoul of contractual covenants contained in network affiliation, syndication and other programming agreements prohibiting the recording of material provided by those parties for broadcast. Accordingly, a mandatory recording/retention requirement could impose on broadcasters significant transaction costs to renegotiate such agreements.

Additionally, for broadcasters who do not record and retain copies of their broadcasts, as permitted under the current voluntary policy, a mandatory recording and retention requirement could impose a significant financial and operational burden. A mandatory recording/retention rule would result in significant new one-time and recurring expenses for those broadcasters who choose not to record some or all of their broadcasts. Mandatory recording would impose new costs for equipment (for primary and redundant recording devices, tapes, discs, electronic storage and the like), employee labor, third-party fees (e.g. for recording services) and other costs. Morgan Murphy estimates the one-time cost of purchasing recording equipment would range between five and twenty-five thousand dollars per television station, depending on bit rates and other factors. These costs would be double during the time television stations are operating both analog and digital facilities and do not include costs for people to operate the equipment. Additionally, this initiative would seem to stifle digital television innovators weighing in on subchannel migration, as these additional transcription costs would stack up, collectively. The costs for radio stations would seem to be less, however in reality the same factors come into play, namely initial hardware acquisition and installation, increased operational labor loads, and the associated file management and storage concerns running parallel to those incurred in television.

Morgan Murphy believes that, given this agency's enforcement track record, this Commission proposal provides little additional benefit in the public interest, while placing new and onerous financial and operational burdens on broadcasters. For the above-referenced reasons, Morgan Murphy urges the FCC **not** to adopt the proposal to require the taping and retention of broadcast material contained in the NPRM.

Respectfully submitted,

/s/ Elizabeth Murphy Burns

Elizabeth M. Burns, President
Morgan Murphy Stations

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